

### REMARKS

The Notice states that the brief does not contain the items required under 37 CFR 41.37(c) or the items are not under the proper heading or in the proper order. In the comments at the bottom of the page, the Examiner states that "Item no. II of the appeal brief should have the header: Related Appeals and Interferences. In the instant, item no. II of Applicant's brief is: Related Appeals, Interferences, and Judicial [sic] Proceedings. The heading provided by Applicant for item no. II fails to satisfy the requirements of 37 C.F.R. 41.37(c), which requires the header to be Related Appeals and Interferences."

Applicants disagree that the Appeal Brief as filed on July 12, 2006 is non-compliant with 37 C.F.R. §41.37. However, solely in the interest of expediency and without agreement that the original Appeal Brief as filed is non-compliant, Applicants are refiling the Appeal Brief herewith, with the heading for item no. II amended to read "Related Appeals and Interferences."

Applicants note that the text of 37 C.F.R. §41.37 states that the headings in the appeal brief must be "appropriate" and "in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x)" of §41.37. The rules do not state that the headings of the appeal brief must have the exact wording as the paragraph headings set forth in the C.F.R., as asserted by the Examiner. 37 C.F.R. §41.37, paragraph (c)(1)(ii), is titled "Related Appeals and Interferences." This section states that the appeal brief must contain "a statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee." Emphasis added. Thus, Applicants submit that it was not improper to title this section of the Appeal Brief submitted on July 12, 2006 "Related Appeals, Inteferences, and Judicial Proceedings," since these are all proceedings that must be addressed in this section of the appeal brief, according to the C.F.R.

MPEP §1205.03 states that "[t]he examiner should not require a corrected brief for minor non-compliance in an appeal brief (e.g., the brief has a minor error in the title of a section heading)." Emphasis added. Although Applicants do not concede that the Appeal Brief as filed contained an error in section heading no. II, even if the Examiner did believe that there were a

minor error in this heading, correction on this basis should not have been required, according to the procedures set forth in the MPEP. Therefore, Applicants submit that the issuance of the Notice of Non-Compliant Appeal Brief was improper.

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Respectfully submitted,

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